

MONEY-MAKING SCHEMES

Work Recruitment Schemes

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) regulates unfair and deceptive business practices. DATCP has adopted a rule to protect consumers against unfair ***work recruitment schemes*** that aim to get money from job applicants, not just recruit them as workers. This rule is found in Wisconsin Administrative Code chapter ATCP 116.

Coverage

ATCP 116 applies to businesses (recruiters) that ask prospective recruits to make any kind of “purchase or investment” (any direct or indirect payment to the recruiter). ATCP 116 applies to the following recruits:

- Prospective employees.
- Prospective “sales workers,” regardless of whether they are recruited as employees, agents or independent contractors. “Sales work” means solicitation of persons to buy or lease goods, services or contract rights that the recruiter is in the business of selling or leasing.

Advertisements Must Disclose Purchase Requirements

Whenever a recruiter solicits prospective recruits, by anything other than a face-to-face statement, the recruiter must clearly disclose all the following in the solicitation (“work advertisement”):

- The nature and amount of every “purchase or investment” that a recruit must make in order to obtain a work offer.
- The nature and amount of every “purchase or investment” that a recruit must make in order to have a reasonable prospect of achieving the potential earnings suggested by the recruiter in the work advertisement. This disclosure requirement does not apply to a recruit’s purchases of product inventory to fill customer orders actually obtained by the recruit.

Documenting Purchase Requirements

A recruiter must document every “purchase or investment” that a recruit must make in order to obtain a work offer. The recruiter must document the “purchase or investment” in writing, and must provide a copy of that document to the recruit before the recruit agrees to make the required “purchase or investment.” The document must include all the following:

- The name of the recruit.

- The name and permanent address of the recruiter.
- The nature of the “purchase or investment” and the terms under which it is made.
- The amount of the “purchase or investment,” including any interest or other charges that may apply.
- The consideration (money or other thing of value) given by the recruiter in return for the “purchase or investment.”
- If the “purchase or investment” involves a separate contract or note, a copy of that contract or note. Each contract and each note must state whether it is subject to assignment.
- The terms and conditions of any work offer to which the “purchase or investment” is related. The terms and conditions must include all the following:
 - The nature of the work offered.
 - The source from which the recruit will receive his or her earnings, if other than the recruiter.
 - The form (such as wages, salaries, commissions or direct profits from sales) in which the recruit will receive his or her earnings.
 - The agreed rate of pay if applicable, or the agreed method by which earnings will be determined.
 - Fringe benefits if any.
 - Applicable work terms and conditions, including work hours and location. If the recruiter offers sales work in a specific territory, the work offer must describe that territory and state whether it is exclusive.

Earnings Claims

If a recruiter makes any earnings claim to work recruits who are asked to make a “purchase or investment,” the recruiter must disclose all the following in connection with that claim:

- The source from which the worker will receive the earnings, if other than the recruiter.
- The form (such as wages, salaries, commissions or direct profits from sales), in which the recruit will receive the earnings.
- The basis on which the earnings will be paid or received (such as per unit of time worked, per unit of work completed, or per volume of sales). The recruiter must disclose the basis so

that a recruit can readily understand, compare and evaluate the stated earnings.

- Requirements that the recruit must meet in order to qualify for the stated earnings, including any training or probationary service requirement.
- The nature and amount of every purchase or investment that the recruit must make in order to have a reasonable prospect of achieving the stated earnings. This disclosure requirement does not apply to a recruit's purchases of product inventory to fill customer orders obtained by the recruit unless the recruit is required to buy the product inventory in order to obtain a work offer.

Prohibited Practices

A recruiter who solicits a "purchase or investment" from a recruit may not do any of the following:

- Make any false, deceptive or misleading representation to that recruit.
- Misrepresent the nature of the work that the recruiter offers or may offer to that recruit.
- Misrepresent the nature or amount of earnings that the recruit may make.
- Misrepresent that an offer to engage that recruit as an independent contractor is an offer to engage that recruit as an employee.
- Engage in a "bait and switch" scheme whose purpose is not to recruit workers to perform work.
- Misrepresent the recruiter's identity.

Employment Services

A person may not misrepresent an offer of "employment services" as an actual offer of work. An "employment service" is not a work offer, but merely a service designed to help an individual find work. For example, an "employment service" may include assistance with any of the following:

- Finding work announcements, or obtaining work offers.
- Preparing resumes or portfolios.
- Obtaining or completing work application forms.

Rule Background

DATCP adopted ATPC 116 as a *general order* (rule) under Wisconsin's Unfair Business Practices Law, Wisconsin Statutes section 100.20.

- DATCP adopted a prior version of ATPC 116 in 1962 (DATCP Docket No. 649).
- DATCP repealed and recreated ATPC 116 in 1996 (DATCP Docket No. 95-R-11).

Rule Enforcement

Private Remedy

A person who suffers a monetary loss because of a violation of ATCP 116 may sue the violator under Wisconsin Statutes section 100.20(5), and may recover twice the amount of the loss, together with costs and attorneys fee.

Injunction and Restitution

DATCP may seek a court order, under Wisconsin Statutes section 100.20(6), enjoining violations of ATCP 116 and ordering the violator to pay restitution to consumers. The Department of Justice or a district attorney may represent DATCP in court.

Civil Forfeiture

DATCP or any district attorney may start a court action under Wisconsin Statutes section 100.26(6) to recover a civil forfeiture from a person who violates ATCP 116. The court may impose a civil forfeiture of up to \$10,000 per violation. The Department of Justice or a district attorney may represent DATCP in court.

Criminal

A district attorney may start a criminal prosecution, under Wisconsin Statutes section 100.26(3), against a person who violates ATCP 116. A violator may be fined up to \$5,000 or sentenced to as much as a year in jail, or both.